

Exhibit 113

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.

Civil Action No. 07-10248-PBS

Exhibit to the July 24, 2009, Declaration of James J. Fauci
In Support of Plaintiff's Motion for Partial Summary Judgment and
In Opposition to the Roxane Defendants' Motion For Partial Summary Judgment

NO. CV3-03079

THE STATE OF TEXAS

IN THE DISTRICT COURT OF

- - - - - x

THE STATE OF TEXAS

ex rel.

VEN-A-CARE OF THE
FLORIDA KEYS, INC.

Plaintiffs,

vs

TRAVIS COUNTY, TEXAS

ROXANE LABORATORIES, INC.,
BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC.,
BEN VENUE LABORATORIES, INC.,
and BOEHRINGER INGELHEIM
CORPORATION

Defendants.

201st JUDICIAL DISTRICT

- - - - - x

VIDEOTAPED DEPOSITION OF JIM KING

Taken before Lori Miller, Licensed Shorthand
Reporter, a Notary Public in and for the State of
Connecticut, pursuant to Notice and the Connecticut Practice
Book, at The Inn at Ethan Allen, 21 Lake Avenue Extension,
Danbury, Connecticut, on December 3, 2004, commencing at 9:30
a.m.

1 APPEARANCES:
2
3

4 Representing the Plaintiff State of Texas

5 ATTORNEY GENERAL OF TEXAS

300 West 15th Street

Ninth Floor

6 Austin, Texas 78701

By Cynthia O'Keefe, Esquire
7

8 Representing the Relator

9 ANDERSON LLC

1300 Guadalupe, Suite 103

Austin, Texas 78701

By C. Jarrett Anderson, Esquire
10
11

12 Representing the Defendants

13 SCOTT, DOUGLAS & McCONNICO, LLP

One America Center

14 Fifteenth Floor

600 Congress Avenue

15 Austin, Texas 78701

By Steven J. Wingard, Esquire
16

17 VORYS, SATER, SEYMOUR and PEASE, LLP

52 East Gay Street

18 Columbus, Ohio 43216-1008

By Paul J. Coval, Esquire
19

20 Edward Miller, Esquire

Boehringer Ingelheim Pharmaceuticals, Inc.

21 900 Ridgebury Road

Ridgefield, Connecticut 06877
22
23
24
25

1 What changes did you make?

2 A I'd really have to look at the document. I
3 don't even remember what I looked at this morning with
4 respect to the recommendations. I would have to look at
5 the document.

6 Q So, without looking at that exhibit, you can't
7 testify as to how Boehringer Ingelheim Pharmaceuticals,
8 Inc., and Roxanne Laboratories changed their pricing
9 strategies after that point in time?

10 A No, I couldn't with any surety that I'm saying
11 the right thing.

12 Q So, that would be pretty much impossible for
13 you to do?

14 A It would be very difficult.

15 Q Do you recall whether or not in 1997
16 Boehringer Ingelheim Pharmaceuticals, Inc., and Roxane
17 Laboratories made an effort to provide similar pricing
18 to customers that competed with each other?

19 A Yes. That's a conclusion I could draw from
20 that.

21 Q And could you give me an example of some
22 customers that you identified as competing with each
23 other that should receive some more pricing?

24 A I can tell you what we did. We tried to look
25 at who the customer was servicing, we looked at who the

1 customer servicing.

2 For instance, if the customer serviced a
3 patient, if they handed a drug to the patient, we clump
4 them together as performing a similar service. If they
5 gave bottles of medicine to a retail establishment, we
6 tried to clump them together as providing the same sort
7 of service.

8 Q And could you give me some examples of some
9 clients that would fall into that competitive situation?

10 A Yes. A retail pharmacy and a nursing home,
11 for instance, a nursing home. Both of them dispense
12 medication to a patient.

13 Q What about wholesalers, who would be the
14 customers that would compete with wholesalers?

15 A Mostly retail stores, independent retail
16 stores mostly.

17 Q Were there any distributors that would compete
18 with wholesalers?

19 A The bigger competitor that I see could be of
20 wholesalers is the chain distribution centers, like a
21 Walgreens distribution center. They perform the same
22 service that a wholesaler does.

23 Q Okay. So, would that be a chain warehousing
24 pharmacy?

25 A That's correct.

1 Q And have you ever known a product to be
2 successful at Boehringer Ingelheim Pharmaceuticals in
3 the marketplace without being covered by Medicaid?

4 A That's a rough question to answer. Even with
5 products that are covered by Medicaid, in some states
6 they're not covered by Medicaid, and I would call those
7 products successful. But if 40 states out of 50 won't
8 cover it for Medicaid, so it's a relative thing,
9 probably it wouldn't be considered successful.

10 But if 8 states didn't pay for it and 42 did,
11 then we probably would do better in Medicaid and
12 therefor it would be more successful. So, it's a
13 relative thing. Yes, Medicaid is important to us,
14 Medicaid reimbursement is important, but it's not the
15 only thing that we need to make a product successful.

16 Q Sure. Given that Medicaid reimbursement on
17 pharmaceutical products is important, is that why
18 Boehringer Ingelheim, and Roxanne for that matter, have
19 executed Medicaid rebate agreements with HIPFA, now
20 known as CMS?

21 MR. WINGARD: Objection; form.

22 A I frankly didn't think we had a choice.
23 That's my impression. I didn't think we had a choice.
24 We could chose not be, I guess, in Medicaid, but I
25 didn't think it's really a choice.

1 BY MR. ANDERSON:

2 Q You mean that in the sense that it's not an
3 alternative for a drug company not to have their
4 products covered by Medicaid because they're not going
5 to be successful?

6 A I think for most products that's a very fair
7 statement. For most products, missing that Medicaid
8 marketplace would be pretty substantial, for most
9 products.

10 Q How does Boehringer Ingelheim insure that
11 Roxanne pays the proper rebate?

12 MR. WINGARD: Objection to form.

13 A I really don't know.

14 BY MR. ANDERSON:

15 Q How does Boehringer Ingelheim insure that it
16 pays the proper rebate?

17 A We have a group that takes care of all that,
18 but I have no dealings with them, other than to say hi
19 to them, I just knew who they are.

20 Q Well, like on the pricing committee, who is it
21 that is determining whether or not a new lower price to
22 a managed care customer will have a Medicaid rebate
23 implication?

24 MR. WINGARD: Objection to form.

25 A That would be the finance person on the